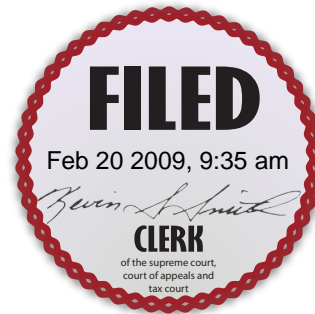


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

DONALD C. SWANSON, JR.
Fort Wayne, Indian

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

KELLY A. MIKLOS
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

ANTION HILL,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 02A03-0807-CR-347

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Kenneth Scheibenberger, Judge
Cause No. 02D04-0710-FB-149

February 20, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Following a guilty plea, Antion Hill was convicted of one count of dealing in a schedule I, II, or III controlled substance, a Class B felony, and was sentenced to eight years at the Indiana Department of Correction. Hill raises one issue on appeal: whether his eight-year sentence is inappropriate in light of the nature of his offense and his character. Concluding that the sentence is not inappropriate, we affirm.

Facts and Procedural History

On two occasions in March 2007, Hill sold oxycodone, a schedule II controlled substance, to an undercover police officer. The State charged Hill with two counts of dealing in a schedule I, II, or III controlled substance, both Class B felonies. Hill entered a plea of guilty to one count as charged and the State dismissed the other count. The plea agreement specified that Hill's executed sentence could not exceed ten years. The trial court accepted the plea and sentenced Hill to eight years. The trial court cited Hill's criminal history and failed prior attempts at drug rehabilitation as aggravating circumstances and Hill's drug addiction as a mitigating circumstance.

Discussion and Decision

I. Standard of Review

Pursuant to Indiana Appellate Rule 7(B), we may revise a sentence if, after due consideration of the trial court's decision, we find that the sentence "is inappropriate in light of the nature of the offense and the character of the offender." Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on reh'g, 875 N.E.2d 218. We may "revise sentences when certain broad conditions are satisfied," Neale v. State, 826 N.E.2d 635,

639 (Ind. 2005), and recognize that the advisory sentence “is the starting point the Legislature has selected as an appropriate sentence for the crime committed,” Weiss v. State, 848 N.E.2d 1070, 1072 (Ind. 2006). In determining whether a sentence is inappropriate, we may look to any factors appearing in the record. Roney v. State, 872 N.E.2d 192, 196 (Ind. Ct. App. 2007), trans. denied; cf. McMahon v. State, 856 N.E.2d 743, 750 (Ind. Ct. App. 2006) (“[I]nappropriateness review should not be limited ... to a simple rundown of the aggravating and mitigating circumstances found the by the trial court.”). However, the defendant bears the burden to “persuade the appellate court that his . . . sentence has met this inappropriate standard of review.” Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

II. Appropriateness of Hill’s Sentence

Hill was convicted of dealing in a schedule I, II, or III controlled substance, a Class B felony. Class B felonies are punishable by “a fixed term of between six (6) and twenty (20) years, with the advisory sentence being ten (10) years.” Ind. Code § 35-50-2-5. Hill and the State agreed, pursuant to the plea agreement, that Hill’s executed sentence could not exceed ten years, the advisory sentence for a Class B felony. The trial court sentenced Hill to eight years. Hill contends the nature of his offense does not support an eight-year executed sentence because he was “not in the business of earning substantial money for his activities, but rather supporting his addictions.” Brief of Defendant-Appellant at 5. Moreover, he contends his character does not support an eight-year executed sentence because his “upbringing by two alcoholic parents, together with physical abuse by his father, provides a setting in which alcohol and drug abuse can

flourish.” Id. Hill argues that an eight-year sentence with two years suspended to probation would provide him the opportunity to seek meaningful substance abuse treatment and better serve both himself and society.

As to the nature of Hill’s offense, the record discloses that Hill sold oxycodone to an undercover police officer twice in two days. Based upon the limited information available to us, however, we cannot say that the offense was any more egregious than the typical dealing offense.

As to Hill’s character, he has an extensive criminal history, including fourteen misdemeanor convictions and three felony convictions. His contact with the criminal justice system began when he was fifteen years old and has continued unabated since then. None of Hill’s prior convictions have been for drug offenses, however. See Rutherford v. State, 866 N.E.2d 867, 874 (Ind. Ct. App. 2007) (“The significance of a criminal history in assessing a defendant’s character and an appropriate sentence varies based on the gravity, nature, and number of prior offenses in relation to the current offense.”). The instant offense was committed approximately seven months after Hill was released from the Department of Correction after serving a sentence for Class D felony resisting law enforcement and Class A misdemeanor battery. Hill self-reported beginning to use alcohol and marijuana at age fourteen and cocaine at age nineteen; despite several attempts at rehabilitation, Hill continues to use cocaine daily when he is

not incarcerated. See Appellant's Appendix at 18.¹ Although Hill claimed at his sentencing hearing that he had a "revelation" while incarcerated pending resolution of this case and now knows that he needs to take steps to change, transcript at 12, we believe the trial court's imposition of a less-than-advisory sentence adequately takes into consideration both Hill's extensive criminal history and his expressed willingness to turn his life around and that suspending part of that sentence to probation is not warranted. In short, we conclude that Hill has not met his burden of persuading this court that his eight-year executed sentence for dealing is inappropriate.

Conclusion

Hill's eight-year sentence is not inappropriate considering the nature of his offenses and his character.

Affirmed.

CRONE, J., and BROWN, J., concur.

¹ The pre-sentence investigation report is included as part of the Appendix on white paper. Indiana Appellate Rule 9(J) requires that "[d]ocuments and information excluded from public access pursuant to Ind. Administrative Rule 9(G)(1) shall be filed in accordance with Trial Rule 5(G)." Indiana Administrative Rule 9(G)(1)(b)(viii) states that "[a]ll pre-sentence reports pursuant to Ind. Code § 35-38-1-13" are "excluded from public access" and "confidential." Hill's inclusion of the pre-sentence investigation report within the appendix is inconsistent with Trial Rule 5(G), which states, in pertinent part, that "[w]hole documents that are excluded from public access . . . shall be tendered on light green paper or have a light green coversheet attached to the document, marked 'Not for Public Access' or 'Confidential.'"